

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

FILED

UNITED STATES OF AMERICA,

Plaintiff,

v.

MONTANA POLE AND TREATING PLANT,  
TORGER L. OAAS,  
THE ATLANTIC RICHFIELD COMPANY,  
THE BURLINGTON NORTHERN RAILROAD  
COMPANY, and INLAND PROPERTIES,  
INC.,

Defendants.

THE BURLINGTON NORTHERN  
RAILROAD COMPANY,

Crossclaimant,

v.

MONTANA POLE AND TREATING PLANT,  
TORGER L. OAAS, and  
THE ATLANTIC RICHFIELD COMPANY.

ATLANTIC RICHFIELD CO.

Plaintiff,

v.

TORGER L. OAAS, T. ERIK OAAS  
MARTHA OAAS, MONTANA POLE AND  
TREATING PLANT, BANK OF MONTANA  
- BUTTE, RIEDEL ENVIRONMENTAL  
SERVICES, INC., ROY F. WESTON,  
INC., BURLINGTON NORTHERN RAILROAD  
COMPANY,

Defendants.

LODGED

MAY 29 1997

LOU ALEKSICH, JR.  
By

Deputy Clerk

CONSOLIDATED

Clerk  
Civil Action No.

91-82-BU-PGH

AUG - 6 1997

LOU ALEKSICH, JR. CLERK  
BY *Marlene Hersack*  
DEPUTY CLERK

ORIGINAL

RECEIVED

AUG 07 1997

LEGAL UNIT

Civil Action No.  
90-75-BU-PGH

ENVIRONMENTAL  
PROTECTION AGENCY

AUG 11 1997

MONTANA OFFICE

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BURLINGTON NORTHERN RAILROAD  
COMPANY

Third Party Plaintiff,

v.

DENNIS R. WASHINGTON, INLAND  
PROPERTIES, INC.; AND MONTANA  
RESOURCES, INC.

Third Party Defendants.

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STATE OF MONTANA

Plaintiff,

v.

THE ATLANTIC RICHFIELD COMPANY,  
THE BURLINGTON NORTHERN RAILROAD  
COMPANY, INLAND PROPERTIES,  
INC., MONTANA RESOURCES, INC.,  
and DENNIS R. WASHINGTON  
Defendants.

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CONSENT DECREE

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## **I. BACKGROUND**

A. The Montana Pole and Treating Plant Site (the "Site") is located in Silver Bow County in Butte, Montana. A former wood treating plant owned and operated by members of the Oaas family and Montana Pole and Treating Plant, Inc. ("MPTP") is located on the Site. The plant operated at the Site from approximately 1946 through 1984. MPTP operations and other MPTP related Site activities resulted in the release of hazardous or deleterious substances including, but not limited to, pentachlorophenol ("PCP") and PCP-contaminated wood treating oil, into surface and subsurface soils, surface water and ground water at the Site.

B. Between 1983 and 1993, in response to a release or substantial threat of release of hazardous substances at or from the Site, the United States Environmental Protection Agency ("EPA") conducted a series of response actions pursuant to Section 104 of Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9604, and EPA's removal authority at the Site. These actions included, but were not limited to, the excavation and storage of contaminated soils, fencing, construction of groundwater interception, recovery, and treatment systems, and various engineering studies. EPA contracted with Roy F. Weston, Incorporated ("Weston") and Riedel Environmental Services, Incorporated ("Riedel") to assist EPA in performing some of these response activities, and Weston and Riedel, under the direction and control of EPA, provided these services as response action contractors pursuant to Section 119 of CERCLA, 42 U.S.C. § 9619, and in accordance with the National Contingency Plan, ("NCP"), 40 CFR Part 300. Total estimated costs for the response actions conducted by EPA, together with the costs of

oversight of the remedial investigation and feasibility study for the Site ("RI/FS") and other costs through the completion of Remedial Design, are approximately \$11,778,000.

C. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the Site was listed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 22, 1987 [Fed. Reg. Vol. 52, 140, pg. 27623];

D. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, the Atlantic Richfield Company ("ARCO"), under an Administrative Order on Consent ("AOC") issued by the State of Montana Department of Health and Environmental Sciences in 1990, conducted an RI/FS for the Site pursuant to 40 C.F.R. § 300.430. The 1993 Record of Decision for the Site states that the RI/FS was conducted in accordance with the NCP;

E. The United States of America ("United States"), on behalf of EPA, filed a complaint in this matter styled as United States v. MPTP, et al. (CV 91-082-BU-PGH) alleging causes of action pursuant to Sections 107 and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607 and 9613(g)(2), against MPTP, Torger L. Oaas, ARCO, and Burlington Northern Railroad Company ("BNRR") on October 9, 1991. The United States alleged that MPTP and Torger L. Oaas were past and present owners and operators of the Site, and that ARCO and BNRR were past and/or present owners of the Site. On October 24, 1991, technical amendments were made in the United States' First Amended Complaint. In its answer to the First Amended Complaint of the United States, the Atlantic Richfield Company asserted a claim in recoupment against the United States. On April 15, 1994, the United States, by a Second Amended Complaint, added Inland Properties, Inc. as a defendant to the foregoing

action and alleged that Inland Properties, Inc. is a present owner of a portion of the Site. On July 16, 1996, the United States, by a Third Amended Complaint ("Complaint"), added Montana Resources, Inc. and Dennis R. Washington as defendants to the foregoing action and alleged that Montana Resources, Inc. and Dennis R. Washington were past owners of a portion of the Site.

F. The United States in its Complaint, as amended, seeks reimbursement of response costs incurred and to be incurred by the United States for response actions in connection with the release or threatened release of hazardous substances at the Site, and a declaration of the named Defendants' liability for further response costs in connection with the Site.

G. On October 25, 1990, ARCO filed a Complaint in this matter captioned as ARCO v. Oaas, et al. (CV 90-75-BU-PGH), against MPTP, Torger L. Oaas, T. Erik Oaas, Martha Oaas, and Bank of Montana-Butte which was later amended to add BNRR, Weston, and Riedel as defendants. In response to cross-claims made by Dennis R. Washington, Montana Resources, Inc., and Inland Properties, Inc. (collectively "MRI"), ARCO also filed counter-claims against MRI on September 10, 1992. ARCO alleged, inter alia, that all of these parties are liable to ARCO under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and the Montana Comprehensive Environmental Cleanup and Responsibility Act ("CECRA"), Mont. Code Ann., §§ 75-10-701 *et seq.*, for contribution and for recovery of response costs in connection with the release or threatened release of hazardous or deleterious substances at the Site and for contribution for natural resource damages under CERCLA and CECRA. In addition, ARCO asserted common law negligence claims against Riedel and Weston, and asserted a contractual indemnity claim against MRI.

H. BNRR filed cross-claims against MPTP, Torger L. Oaas, T. Erik Oaas, Martha Oaas, Weston, and Riedel, and cross-claims and counterclaims against ARCO. On May 15, 1992, BNRR brought a third party complaint against MRI. On October 24, 1994, BNRR moved to amend its pleadings to assert third-party claims against Bud King Construction Company, the State of Montana, State of Montana Department of Transportation, and State of Montana Highway Commission. BNRR alleged, inter alia, that all of these parties are liable to BNRR for cost recovery and contribution under Section 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, CECRA, Mont. Code Ann. §§ 75-10-701 et seq., and common law in connection with the release or threatened release of hazardous or deleterious substances at the Site and for contribution for natural resource damages under CERCLA and CECRA.

I. On April 7, 1992, the Court ordered ARCO v. Oaas, et al. and United States v. MPTP, et al. consolidated for all purposes ("Consolidated Litigation.")

J. On August 18, 1992, MRI filed cross-claims in this matter against MPTP, Torger L. Oaas, T. Erik Oaas, Martha Oaas, ARCO, Weston, and Riedel and counter-claims against BNRR alleging, inter alia, that all of these parties are liable to MRI under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and CECRA, Mont. Code Ann., §§ 75-10-701 et seq., for contribution and for recovery of response costs in connection with the release or threatened release of hazardous or deleterious substances at the Site and for contribution for natural resource damages under CERCLA and CECRA. MRI later moved to amend its complaint to include various contractual claims against ARCO.



K. On January 21, 1992, Riedel filed a counter-claim alleging that ARCO is liable under CERCLA, CECRA and common law for contribution to Riedel in connection with the release or threatened release of hazardous or deleterious substances at the Site.

L. On January 21, 1992, Weston filed a counter-claim alleging that ARCO is liable under CERCLA, CECRA and common law for contribution to Weston in connection with the release or threatened release of hazardous or deleterious substances at the Site and that ARCO is liable to Weston under the theories of recoupment and set-off.

M. The Public Comment Drafts of the RI and FS for the Site were completed in February 1993.

N. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the State, as the lead agency, published notice of the completion of the RI and FS and of the proposed plan for remedial action for the Site on May 7, 1993, in a major local newspaper of general circulation. The State provided an opportunity for written and oral comments from the public on the proposed plan and the supporting analysis and information in the administrative record. A transcript of the public hearing held on May 27, 1993, and the written public comments are available to the public as part of the administrative record upon which the selection of the response action was based.

O. The decision on the remedial action to be implemented at the Site is embodied in a final record of decision (the "1993 Record of Decision"), executed by the State on September 21, 1993, and by EPA on September 22, 1993. The 1993 Record of Decision includes a responsiveness summary to the public comments received. The present value of the cost to perform the remedy, as estimated in the 1993 Record of Decision, ranges from

\$27,500,000.00 to \$55,200,000.00. The EPA's and the State's estimated present value of the cost of the remedy as set forth in the 1993 Record of Decision is approximately \$35,300,000. Notice of the final remedial action plan, as set forth in the 1993 Record of Decision, was published in the Federal Register in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b), on October 10, 1993.

P. In accordance with the NCP, EPA notified the State in June 1994 that the potentially responsible parties associated with the Site declined to participate in negotiations for the implementation of the remedial design, remedial action and operation and maintenance for the Site. Upon such notice, EPA entered into an agreement with the State under which the State, using EPA funding, prepared the Remedial Design; and subsequently entered into a Superfund Memorandum of Agreement for implementation of Remedial Action and Operation and Maintenance. In accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), and for other reasons, the State was also given the opportunity to participate in the settlement discussions which led to this Consent Decree. On July 16, 1996, the State of Montana intervened as an additional plaintiff in the Consolidated Actions, filing claims against ARCO, BNRR, and MRI.

Q. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the relevant Federal natural resource trustee, the United States Department of the Interior, on May 24, 1991, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship. The DOI chose not to participate in discussions relating to natural resource damages at the Site. This Consent Decree does not address potential claims of any

natural resource damage trustee, including the United States, for natural resource damages as no such claims have been brought by the United States in its Complaint, as amended, or by other governmental parties in this action.

R. On March 7, 1996, a consent decree between the United States, the State of Montana, Riedel, Weston, ARCO, BNRR, Inland Properties, Inc., Montana Resources, Inc., and Dennis R. Washington was lodged in the District Court for the District of Montana. By Order of the Court, the foregoing consent decree was entered on July 16, 1996. That consent decree, inter alia, resolves certain claims asserted among and between the parties to that consent decree and provides for payment of \$2,700,000 by ARCO, BNRR, and MRI as partial reimbursement of the United States' past costs of approximately \$11,700,000.00. The consent decree also provides for payment by ARCO, BNRR, and MRI of approximately \$35,070,000 as reimbursement for future costs. Past response costs unrecovered under the consent decree equal or exceed approximately \$9 million. MPTP, Torger L. Oaas, and Martha Oaas were not parties to the consent decree entered by the Court on July 16, 1996. The United States, the State, Weston, and Riedel contend that MPTP, Torger L. Oaas, and Martha Oaas are jointly and severally liable for all response costs incurred or to be incurred at the Site.

S. The objectives of the Parties in entering into this Consent Decree are: (1) to reimburse the United States and the State for unrecovered Past Response Costs that they have incurred or paid at this Site to protect public health, welfare or the environment from alleged releases or threatened releases of Waste Material at, on, or from the Site; (2) to ensure that the Remedial Design, Remedial Action and Operation and Maintenance at the Site as set

forth in the ROD are implemented in a cost-effective and timely manner; (3) to resolve the liability of the Settling Defendants for Past Response Costs related to the Site as provided in this Consent Decree; and, (4) resolve any and all claims which Settling Defendants may have against Weston and Riedel arising out of services which Weston and Riedel provided to EPA in connection with the Site.

T. MPTP, Torger L. Oaas, and Martha Oaas contend that they have a limited ability to pay for unrecovered response costs incurred, and to be incurred, at this Site, and have provided complete and accurate financial information to the United States and the State to support that contention, intending that these parties rely on that information. The United States and the State have reviewed the financial submissions of MPTP, Torger L. Oaas, and Martha Oaas and, in reliance on the truth and completeness of those submissions, have determined that MPTP, Torger L. Oaas, and Martha Oaas have a limited ability to pay the Settling Plaintiffs' Past Response Costs at Site incurred by the United States and the State.

U. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

**THEREFORE**, with the consent of the parties to this Consent Decree, it is  
**ORDERED, ADJUDGED, AND DECREED:**

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607 and 9613(b) and supplemental jurisdiction over the claims arising under the laws of the State. This Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in the District of Montana. The Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

2. Settling Defendants admit that the United States, the State, Riedel, and Weston have claims (both asserted and unasserted) against them under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and CECRA, Mont. Code Ann., §§ 75-10-701 *et seq.*, for contribution and for recovery of response costs in connection with the release or threatened release of hazardous or deleterious substances at the Site which would allow the Court to grant relief in favor of United States, the State, Riedel, and Weston.

## **III. PARTIES BOUND**

3. This Consent Decree applies to and is binding upon Settling Plaintiffs the United States, the State, Riedel, and Weston, and upon the Settling Defendants MPTP, Torger L. Oaas, and Martha Oaas and their successors and assigns. Any change in ownership or corporate or other legal status including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the responsibilities of the Settling Defendants under this Consent Decree.

#### IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto the following definitions shall apply:

a. **"CECRA"** shall mean the Montana Comprehensive Environmental Cleanup and Responsibility Act, as amended, Mont. Code Ann. §§ 75-10-701 et seq.

b. **"CERCLA"** shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

c. **"Certification of Completion"** shall mean EPA's certification pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that Remedial Action has been completed at the Site in accordance with the requirements of CERCLA, the NCP and the ROD.

d. **"Consent Decree"** shall mean this Decree and any attached appendices. In the event of any conflict between this Consent Decree and any Appendix, this Decree shall control.

e. **"Day"** shall mean a calendar day. **"Working day"** shall mean every day other than a Saturday, Sunday, or State or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run until the Settling Defendant's close of business of the next working day.

f. **"DEQ"** shall mean the Montana Department of Environmental Quality, formerly known as the Montana Department of Health and Environmental Sciences ("DHES"), and any successor departments or agencies of the State.

g. **"Effective Date"** shall mean the date upon which this Consent Decree is entered by the Court.

h. **"EPA"** shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

i. **"Interest"** in accordance with 42 U.S.C. § 9607(a), shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507. In calculating the Interest, EPA compounds on an annual basis.

j. **"MPTP"** shall mean Montana Pole and Treating Plant, a dissolved Montana corporation.

k. **"National Contingency Plan"** or **"NCP"** shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

l. **"Operation and Maintenance"** or **"O&M"** shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan to be developed for the Site.

m. **"Paragraph"** shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

n. **"Parties"** shall mean the United States, the State, Riedel, Weston, MPTP, Torger L. Oaas, and Martha Oaas.

o. **"Past Response Costs"** shall mean all costs, not inconsistent with the NCP, including, but not limited to, direct and indirect costs, that the United States and the State have paid or will pay for response actions, including Remedial Design, undertaken at the Site prior to implementing the Remedial Action and Operation and Maintenance, together with accrued interest on all such costs.

p. **"Property"** shall mean those parcels of land located on Site described in Appendix A owned by T. Eric Oaas, Martha Oaas and Torger L. Oaas as trustees for the MPTP.

q. **"RCRA"** shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (as amended by the Resource Conservation and Recovery Act).

r. **"Record of Decision"** or **"ROD"** shall mean the EPA/State Record of Decision in which the final remedial action plan relating to the Site is set forth, as executed by the State on September 21, 1993, and by the Regional Administrator, EPA Region VIII, on September 22, 1993, all attachments thereto, and any subsequent modifications thereof. The "1993 Record of Decision" shall mean the EPA/State Record of Decision in which the final remedial action plan relating to the Site is set forth, as executed by the State on September 21, 1993, and by the Regional Administrator, EPA Region VIII, on September 22, 1993, and all attachments thereto, only.

s. **"Remedial Action"** or **"RA"** shall mean the response actions at the Site set forth in the Record of Decision, except for O&M.



t. **"Remedial Design"** or **"RD"** shall mean the response actions at the Site to design the Remedial Action.

u. **"Riedel"** shall mean Riedel Environmental Services, Inc., an Oregon corporation and its successors.

v. **"Residence"** shall mean the domicile of Torger L. and Martha Oaas and related real property and permanent improvements thereon located at 202 West Greenwood Avenue, Butte, Montana 59701 as described in Appendix B.

w. **"Section"** shall mean a portion of this Consent Decree identified by a roman numeral.

x. **"Settling Defendants"** shall mean MPTP, Torger L. Oaas, and Martha Oaas and their successors and assigns to the extent the successor's and assign's liability at this Site derives from the liability of MPTP, Torger L. Oaas, and Martha Oaas, respectively, and not on any independent basis.

y. **"Settling Plaintiffs"** shall mean the United States and the State.

z. **"Settlement Account"** shall mean the State special revenue account related to the Site into which any payments are made as provided in Section IX of the consent decree entered into this action on July 16, 1996.

aa. **"Site"** shall mean the Montana Pole and Treating Plant Superfund site, encompassing approximately 45 acres, located in Butte-Silver Bow County in Butte, Montana, generally depicted and described in Appendix C to this Consent Decree, and shall include any area where hazardous or deleterious substances consisting of pentachlorophenol, PAHs, THPs, BTEX, dioxins, furans, or related constituents, from the MPTP operations,

have been deposited, stored, disposed of, placed, or are otherwise located or come to be located in the future. With respect to any hazardous or deleterious substances other than hazardous or deleterious substances consisting of pentachlorophenol, PAHs, THPs, BTEX, dioxins, furans, or related constituents from the MPTP operations, the Site shall be deemed to include only such hazardous or deleterious substances located within the boundary marked on page 1 of Appendix C, and metals contamination found within that portion of the Chicago, Milwaukee, St. Paul & Pacific Railroad fill materials running south from Silver Bow Creek for a distance of 1650 feet.

ab. "State" shall mean the State of Montana, acting by and through DEQ.

ac. "United States" shall mean the United States of America.

ad. "Waste Material" shall mean: (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous or deleterious substance" under CECRA, Mont. Code Ann. § 75-10-701(6).

ae. "Weston" shall mean Roy F. Weston, Inc., a Pennsylvania corporation.

#### **V. REIMBURSEMENT OF PAST RESPONSE COSTS**

5. Within thirty (30) days of the Effective Date of this Consent Decree, Settling Defendants shall pay, in full and final satisfaction of the Settling Defendants' obligation for Past Response Costs, to the United States for deposit to the Hazardous Substance Superfund a total of Ten Thousand Dollars (\$10,000.00). Payments due under this Paragraph shall be made in the form of a Fedwire Electronic Funds Transfer ("EFT") to the New York Federal

Reserve Bank/U.S. Treasury Department, referencing USAO file number 95Z0291/001, EPA Region VIII, Site/Spill ID # 69, and the Department of Justice case number 90-11-2-429.

Payment shall be made in accordance with instructions provided to the Settling Defendants by the United States Attorney for the District of Montana before execution of the Consent Decree by the Settling Defendants. Any EFTs received by the New York Federal Reserve Bank after 4:00 p.m. (Eastern Time) will be credited to the next working day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XVIII (Notices and Submissions) and the Financial Management Officer, EPA Region VIII, Office of Technical and Management Services, 999 18th Street, Denver, CO 80202. Failure to provide such notice shall not subject the Settling Defendants to stipulated penalties under Paragraph 23 of this Consent Decree.

#### **VI. ADDITIONAL OBLIGATIONS OF SETTLING DEFENDANTS**

##### **Access.**

6. Until such time as the Property and the Residence described in Appendices A and B are transferred by Settling Defendants as directed by EPA, Settling Defendants shall allow EPA and the State and their designated representatives access to the Property on Site for the purposes of implementing the Remedial Action, related response action, study, or investigation at the Site. Settling Defendants shall also allow ARCO, EPA, the State, and their designated representatives such access as EPA or the State deem necessary for the Operation and Maintenance of the Remedial Action or any other response action.

Termination Of Use Of The Property By Other Parties.

7. Upon lodging of this Consent Decree with the Court for public comment, Settling Defendants shall take all actions necessary to terminate any use of or right in the Property and the improvements thereon by any persons or business entities not a party to this Consent Decree, including any easement, lease or other permissive use of the Property, and ensure that all fixtures, chattels, and personalty belonging to such persons or business entities are removed from the Site. Any and all fixtures, chattels, and personalty belonging to such persons or business entities which remain on the Site after the date of lodging of the Consent Decree shall be considered to be abandoned.

Transfer Of Site Property.

8. Within thirty (30) days after the Effective Date of this Consent Decree, Settling Defendants, joined by T. Erik Oaas in his limited capacity as Director/Trustee of MPTP, shall transfer by quitclaim deed all rights and interests in the Property and the Residence described in Appendices A and B as directed by EPA. Settling Defendants each represent and warrant that there are no mortgages, liens or encumbrances against the Property or Residence other than liens held by Butte/Silver Bow County and the United States. The Property and Residence shall be transferred subject to the conditions and restrictions set forth in Appendix D.

9. Settling Defendants waive any claim to any improvement, fixture, chattel, or other personal property located on the Property described in Appendix A, except plant records which Settling Defendant, or its designated representative, shall have the right to remove from the premises. On or before August 31, 1997, Settling Defendants shall vacate the

Residence described in Appendix B and shall have, on or before that time, removed all improvements, fixtures, chattels, and other personalty belonging to Settling Defendants or other persons. Any improvements, fixtures, chattels, or other personal property belonging to Settling Defendants or other persons which remain on the Residence after August 31, 1997 shall be deemed to have been abandoned by Settling Defendants. Settling Defendants waive any right they may have to bring any action at law or in equity for any claim of nuisance or other claims they might have against the United States or the State of Montana which arises from the implementation of the remedy on-Site and Settling Defendants acknowledge that their decision to maintain their domicile at the residence until as late as August 31, 1997 may expose them to noise, intrusion, and other inconveniences that are a result of activities necessary to implement the remedy on Site.

10. Until the Property and Residence are transferred by Settling Defendants pursuant to Paragraph 8, and vacated by Settling Defendants, as specified in Paragraph 9, Settling Defendants shall not be relieved of any responsibility, obligation, or risk of loss resulting or arising from Settling Defendants' ownership of the Property and the Residence, including but not limited to, tax liability.

11. Settling Defendants shall take all actions necessary to effect the requirements of Paragraphs 7, 8 and 9 in accordance with all applicable State and local laws and requirements. Settling Defendants shall bear all direct and indirect costs necessary to implement said actions.

12. As compensation for the transfer of this Residence from Torger L. Oaas and Martha Oaas, the State of Montana shall pay, from Settlement Account funds, to Torger L.

and Martha Oaas, or their designee, \$110,000.00, One Hundred and Ten Thousand Dollars. This payment shall be made within ten (10) days of the transfer described in Paragraph 8.

**Assignment Of Claims.**

13. In connection with the execution of this Consent Decree, related parties have entered into an agreement regarding the identification and assignment of insurance rights by MPTP and Torger L. Oaas and general cooperation of these parties in pursuing insurance claims, along with a covenant not to execute, attached as Appendix F.

**VII. DISPUTE RESOLUTION**

14. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between the Settling Defendant(s) and EPA or the State arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States and the State to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

15. Any dispute between the Settling Defendant(s) and EPA or the State which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party to the dispute sends the other parties to the dispute a written Notice of Dispute.

16. In the event that the parties to the dispute cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA and/or the State shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, the Settling Defendant(s) invoke the formal dispute resolution procedures of this Section by serving on EPA and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied on. The Statement of Position shall specify the disputant's position as to whether formal dispute resolution should proceed.

17. Within twenty-one (21) days after receipt of the Settling Defendant(s)'s Statement of Position, EPA and the State will serve on the Settling Defendants a Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA and the State. This Statement of Position shall include a statement as to whether formal dispute resolution should proceed. Within fourteen (14) days after receipt of EPA's and the State's Statement of Position, a reply may be submitted.

18. Formal dispute resolution for disputes that are accorded review on the administrative record under CERCLA or applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. Nothing in this Section shall be construed to allow any dispute regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted

pursuant to this Section, and in the event of a dispute regarding reopeners under Sections X (Pre-Certification Reservations) and XI (Post-Certification Reservations), EPA and State records regarding information and conditions known under Sections X and XI shall be deemed included in the administrative record for the dispute. Where appropriate, EPA and the State may allow submission of supplemental statements of position by the parties to the dispute.

b. The Assistant Regional Administrator for Ecosystems Protection and Remediation ("ARA"), EPA Region VIII, or his successor, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 18 a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 18 c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 18 b. shall be reviewable by this Court, provided that a motion for judicial review is filed by the Settling Defendant(s) with the Court and served on all Parties within twenty (20) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States and/or the State may file a response to this motion within twenty (20) days of the receipt of the motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant(s) shall have the burden of demonstrating that the decision of the ARA is arbitrary and



capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 18 a.

19. Formal dispute resolution for disputes that are not otherwise accorded review on the administrative record under CERCLA or applicable principles of administrative law, shall be governed by this Paragraph. Following receipt of the Settling Defendant(s) Statement of Position submitted pursuant to Paragraph 17, the ARA, EPA Region VIII, or his successor, will issue a final decision resolving the dispute. The ARA's decision shall be binding on Settling Defendant(s) unless, within twenty (20) days of receipt of the decision, the Settling Defendant(s) file with the Court and serve on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States and/or the State may file a response to this motion within twenty (20) days of the receipt of the motion.

20. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant(s) under this Consent Decree not directly in dispute, unless EPA and the State or the Court agree otherwise. Stipulated penalties as provided for in Paragraph 23 with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant(s) do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Penalties For Failure To Perform).

21. As to any disputes solely between or among the Settling Defendant(s) and Reidel or Weston arising under or with respect to this Consent Decree, the party or parties to the dispute may file with the Court and serve upon the Parties a motion for judicial review of the dispute setting forth the matter in dispute, the efforts made by the disputing parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree.

### **VIII. PENALTIES FOR FAILURE TO PERFORM**

#### **Interest on Late Payments.**

22. In the event that any payments required by Section V. are not made when due, Interest shall accrue on the unpaid balance, from the date payment is due through the date of payment.

#### **Stipulated Penalty.**

23. If the requirements of Paragraphs 8, 9 and 11 are not met by Settling Defendants, the defaulting Settling Defendant(s) shall pay as a stipulated penalty, in addition to the interest required by Paragraph 22, the sum of \$500.00 per day for each day Settling Defendants are in default. Stipulated penalties are due and payable within thirty (30) days of the defaulting Settling Defendant(s)' receipt from EPA of a demand for payment of the penalties. All payments under this Paragraph shall be paid as set forth in Paragraph 5 except that they may be paid by certified check. Penalties shall accrue as provided above regardless of whether EPA has notified the defaulting Settling Defendant(s) of the violation or made a demand for payment, but need only be paid upon demand.

24. If the United States or the State must bring an action to collect any payment or perform any obligation required by this Consent Decree, the defaulting Settling Defendants shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

25. Payments made under Paragraphs 23 and 24 shall be in addition to any other remedies or sanctions available to EPA and the State by virtue of a defaulting Settling Defendant's failure to make timely payments required by this Consent Decree. Notwithstanding any other provision of this Section, the United States and the State may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

#### **IX. COVENANT NOT TO SUE BY THE UNITED STATES AND THE STATE**

26. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as provided in Paragraphs 28-33 and 39, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) for Past Response Costs relating to the Site. This covenant not to sue shall take effect upon the receipt of Settling Defendants' respective payments, as described in Paragraph 5, and the full completion of the obligations of Settling Defendants as set forth in Section VI (Additional Obligations Of Settling Defendants). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their respective obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person. As to Future Response

Costs, the United States hereby withdraws its claims for Future Response Costs, and the United States and Settling Defendants agree that this withdrawal of said claims is without prejudice.

27. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as provided in Paragraphs 28-33 and 39, the State covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 107(a) and 113(f)(1) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f)(1), or Sections 715 and 719 of CECRA, Mont. Code Ann. §§ 75-10-715 and 75-10-719, for Past Response Costs relating to the Site. These covenants not to sue shall take effect upon the payment of Settling Defendants' payment, as described in Paragraph 5, and Settling Defendants full satisfaction of the obligations of Settling Defendant set forth in Section VI (Additional Obligations Of Settling Defendants). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their respective obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person. As to Future Response Costs, the State hereby withdraws its claims against Settling Defendants for Future Response Costs, and the State and Settling Defendants agree that the withdrawal of said claims is without prejudice.

**X. UNITED STATES' AND THE STATE'S PRE-CERTIFICATION  
RESERVATIONS**

28. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling

Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

- (a) conditions at the Site, previously unknown to EPA, are discovered, or
- (b) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

29. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the State for additional costs of response if, prior to Certification of Completion of the Remedial Action:

- (a) conditions at the Site, previously unknown to the State, are discovered, or
- (b) information, previously unknown to the State, is received, in whole or in part,

and these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

**XI. UNITED STATES' AND THE STATE'S POST-CERTIFICATION  
RESERVATIONS**

30. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- (a) conditions at the Site, previously unknown to EPA, are discovered, or
- (b) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

31. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the State for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- (a) conditions at the Site, previously unknown to the State, are discovered, or
- (b) information, previously unknown to the State, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

32. For purposes of Paragraphs 28 and 29, the information and the conditions known to EPA and the State shall include only that information and those conditions known to the EPA and the State as of the date the 1993 Record of Decision was signed and as set forth in: the 1993 Record of Decision for the Site or the administrative record supporting the 1993 Record of Decision. For purposes of Paragraph 30 and 31, the information and the conditions known to EPA and the State shall include only that information and those conditions known to the EPA and the State as of the date of Certification of the Completion of the Remedial Action and as set forth in: the Record of Decision, the administrative record supporting the 1993 Record of Decision, any post-1993 Record of Decision administrative record, any 1993 Record of Decision amendment or Explanation of Significant Differences, the record for the Site maintained by EPA and the State following issuance of the 1993 Record of Decision, or in any information received or discovered by EPA and the State pursuant to the requirements of this Consent Decree prior to the Certification of Completion of the Remedial Action. Further, for purposes of Paragraphs 28 - 31, the information and the conditions known to EPA are and shall be imputed to the State, and the information and the conditions known to the State are and shall be imputed to EPA. For purposes of Paragraphs 30 and 31, a failure of the Remedial Action or O&M, in and of itself, shall not constitute an unknown condition or unknown information as grounds for a reopener, unless it results from an unknown condition or unknown information; nor shall information or

conditions received or discovered during the Remedial Design, or the presence or potential or actual migration of hazardous or deleterious substances consisting of pentachlorophenol, PAHs, TPHs, BTEX, dioxins, furans, or related constituents from the MPTP operations at, on or to the Silver Bow Creek/Butte Area Site constitute an unknown condition or unknown information as grounds for a reopener.

33. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Section IX (Covenants Not to Sue by the United States and the State). The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

- (a) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

- (b) Claims for Future Response Costs;

- (c) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside the Site;

- (d) liability for damages for injury to, destruction of, or loss of natural resources as provided in Section 107 of CERCLA, 42 U.S.C. § 9607, CECRA, Mont. Code Ann. § 75-10-715, or any other federal or state law;

- (e) criminal liability;

- (f) misrepresentation of any material fact upon which this Consent Decree was predicated, including Settling Defendants' ability to pay; and,



(g) liability for violations of federal or state law by the Settling Defendants relating to the Site which occur during or after implementation of the Remedial Action.

## **XII. COVENANTS AND RELEASES BY SETTLING DEFENDANTS**

34. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, including but not limited to EPA, with respect to the Site or this Consent Decree, including, but not limited to: (a) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; (b) any claim against the United States pursuant to CERCLA Sections 107 and 113; or (c) any claims arising out of response activities at the Site, including claims based on EPA's and the State's selection of response actions. Nothing in this Consent Decree shall be deemed to constitute pre-authorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

35. Settling Defendants each hereby covenant not to sue and agree not to assert any past, present, or future claims or causes of action against the State of Montana, its agencies, instrumentalities, officials, employees, agents and contractors, with respect to the Site or relating to the State of Montana's activities in connection with the Site, whether such claims or causes of action are currently known or not, including, but not limited to, any claims which were or could have been asserted in the Consolidated Litigation.

36. Settling Defendants each release Riedel and Weston and their administrators, principals, employees, representatives, agents, successors, and assigns, from all past, present, and future claims and causes of action relating to the Site or relating to Riedel's or Weston's activities in connection with the Site, whether or not such claims or causes of action are currently known or have arisen as of the date of the lodging of this Consent Decree, including, but not limited to, any claims which were or could have been asserted in this Consolidated Litigation.

37. Except as explicitly provided in this Consent Decree, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in the consent decree entered in this matter on July 16, 1996, and the Agreement, Assignment and Covenant Not to Execute entered into in this matter among Settling Defendants, ARCO, BNRR, and MRI, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

### **XIII. CERTIFICATION OF SETTLING DEFENDANTS**

38. Settling Defendants have represented to the United States and the State in the Affidavits attached to this Consent Decree (Appendix E) that they are unable to pay the total Past Response Costs incurred by the United States and the State in connection with the Site, for which they are potentially liable. The Settling Defendants have provided the United States with financial and tax records, statements, and other information disclosing their.

assets, on which statements and information the United States and the State have relied on in compromising their claims for Past Response Costs and agreeing to the settlement contained herein. The United States' and the State's agreement to the terms of this Consent Decree is expressly conditioned on the completeness, accuracy, and truth of the Settling Defendants' financial and tax records, statements, and other information.

39. In the event that any Settling Defendant has made statements in its financial and tax records which are false in any material respect, or has failed to disclose any asset that may have a bearing on the United States' and the State's analysis of Settling Defendant's ability to pay Past Response Costs:

- (a) Settling Plaintiffs' covenants not to sue set forth in Section IX of this Consent Decree shall be nullified, and Settling Plaintiffs shall be free to pursue their claims against Settling Defendants;
- (b) All payments already paid under this Consent Decree shall be forfeited by Settling Defendants; and
- (c) Settling Plaintiffs may pursue all remedies available to them under law.

#### **XIV. EFFECT OF SETTLEMENT-CONTRIBUTION PROTECTION**

40. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants have resolved their liability to the United States and the State for Past Response Costs as provided herein, and are each entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and by CECRA, Mont. Code Ann. § 75-10-719, to their full extent, for matters addressed in this Consent Decree. For purposes of this

Consent Decree, the matters addressed in this Consent Decree are the resolution as provided in this Consent Decree of the liability of the Settling Defendants to the United States and the State associated with Past Response Costs.

41. The Settling Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related to the Site or this Consent Decree, they will notify the Settling Plaintiffs in writing no later than thirty (30) days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to the Site or this Consent Decree, they will notify in writing the Settling Plaintiffs within thirty (30) days after service of the complaint on them. In addition, Settling Defendants shall notify the Settling Plaintiffs within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial for matters related to the Site or this Consent Decree.

42. In any subsequent administrative or judicial proceeding initiated by the Settling Plaintiffs for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Settling Plaintiffs in the subsequent proceeding were or should have been brought in the Consolidated Litigation; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section IX (Covenants Not to Sue by the United States and the State).

## **XV. ACCESS TO INFORMATION**

43. Except as to information already provided to the Settling Plaintiffs in the Consolidated Litigation or administrative proceedings regarding the Site, Settling Defendants shall provide to Settling Plaintiffs, upon written request, copies of all documents and information within their possession or control or that of their contractors, representatives, or agents relating to the Site or activities at the Site. Because Settling Defendants have a limited ability to pay, Settling Plaintiffs shall pay the reasonable costs for any copying requested of Settling Defendants.

## **XVI. FORCE MAJEURE**

44. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of a Settling Defendant or of any entity controlled by a Settling Defendant that delays or prevents the performance of any obligation under this Consent Decree despite the Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (a) as it is occurring and (b) following the potential Force Majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability of the Settling Defendants to make payments as required under the terms of this Consent Decree.

45. If any Force Majeure event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, the Settling Defendants shall notify orally EPA and the State within three (3) days of when Settling Defendants first knew that

the event might cause a delay. Within five (5) days thereafter, Settling Defendants shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and the Settling Defendants' rationale for attributing such delay to a Force Majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. A Settling Defendant shall be deemed to know of any circumstance of which the Settling Defendant or any entity controlled by the Settling Defendant knew or should have known.

46. If EPA, after a reasonable time for review and comment by the State, agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by EPA, after reasonable review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable

opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify the Settling Defendants in writing of the decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a Force Majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

47. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section VII (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 45 and 46, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree.

#### **XVII. RETENTION OF RECORDS**

48. Until six (6) years after the Effective Date of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate or document retention policy to the

contrary. Such records and documents may be retained in an electronic or microfilm format, and the obligation to retain or produce such records and documents under this Section shall not apply to exact duplicates of the records or documents.

49. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State shall deliver any such records or documents to the requesting party.

50. Each of the Settling Defendants hereby certifies, individually, that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since notification of potential liability by EPA and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), regarding the Site.

#### **XVIII. NOTICES AND SUBMISSIONS**

51. Whenever, under the terms of this Consent Decree, written notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided in this Consent Decree. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Parties.



As to the United States:

Bruce Gelber  
Deputy Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Re: 90-11-2-429

As to EPA:

D. Henry Elsen  
Attorney  
U.S. EPA, Montana Office  
301 South Park  
Federal Building-Drawer 10096  
Helena, MT 59624

James Harris (Project  
Coordinator)  
U.S. EPA, Montana Office  
301 South Park  
Federal Building-Drawer 10096  
Helena, MT 59624

As to the State:

William B. Kirley  
Legal Counsel  
Remediation Division  
Montana Department of  
Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Neil Marsh (Project  
Coordinator)  
Remediation Division  
Montana Department of  
Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

As to Weston:

Office of General Counsel  
Roy F. Weston, Inc.  
One Weston Way  
West Chester, Pennsylvania 19380

As to Riedel:

W.D. Nelson, Executive Vice President  
Riedel Environmental Services, Inc.  
12750 Merit Drive, Suite 1166  
Dallas, TX. 75251

Christopher W. Angius  
Perkins Coie  
1211 SW 5th Avenue  
Suite 1500  
Portland, OR. 97204

As to Settling Defendants:

Torger S. Oaas, Esq.  
618 W. Main Street  
Suite 201  
Lewiston, Montana 59457

**XIX. RETENTION OF JURISDICTION**

52. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section VII (Dispute Resolution) hereof.

**XX. MODIFICATIONS**

53. No modifications shall be made to this Consent Decree without written notification and written approval of the United States, the State, and the Settling Defendants or by order of the Court.

54. Nothing in this Consent Decree shall be deemed to alter the Court's power to order, enforce, supervise, or approve modifications to this Consent Decree.

**XXI. APPENDICES**

55. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is a description of the Property; "Appendix B" is a description of the Residence; "Appendix C" is a map of the Site with narrative description; "Appendix D" sets

forth the conditions and restrictions referenced in Paragraph 8; "Appendix E" consist of the financial affidavits of Settling Defendants; and "Appendix F" is the Agreement, Assignment and Covenant Not to Execute between the Settling Defendants and ARCO, BNRR, and MRI.

## **XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

56. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. The United States and the State reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants, Weston, and Riedel consent to the entry of this Consent Decree without further notice and Settling Defendants, Weston, and Reidel will not oppose the terms of or discourage the entry of this Consent Decree during the public comment period, unless the United States and the State have notified the Settling Defendants, Weston, and Riedel in writing that they no longer support entry of the Consent Decree.

57. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation.

58. Nothing in this Consent Decree shall in any way expand or diminish the rights of ARCO, BNRR, or MRI contained in the consent decree entered in the Consolidated Litigation on July 16, 1996.

### XXIII. SIGNATORIES/SERVICE

59. The undersigned representatives of the Parties to this Consent Decree each certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

60. Each Settling Party shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree.


SO ORDERED THIS 16 DAY OF August, 1997.

  
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oaas, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.


FOR THE UNITED STATES OF AMERICA

Date: 5/13/97

  
Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural  
Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Sherry Scheel Matteucci  
United States Attorney  
P.O. Box 1478  
Billings, MT 59103

Date: 5/16/97

  
John N. Moscato  
Attorney  
Environmental Enforcement  
Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945N  
Denver, CO 80202

Date: \_\_\_\_\_

\_\_\_\_\_  
Max H. Dodson  
Assistant Regional Administrator  
For Ecosystems Protection and Remediation,  
Region VIII, U.S. Environmental Protection  
Agency 999 18th Street, Suite 500  
Denver, Colorado 80202

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oaas, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.

FOR THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_

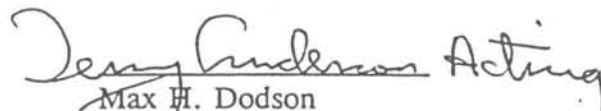
\_\_\_\_\_  
Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural  
Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Sherry Scheel Matteucci  
United States Attorney  
P.O. Box 1478  
Billings, MT 59103

Date: \_\_\_\_\_

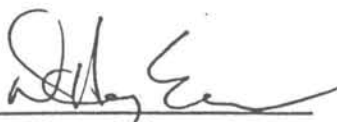
\_\_\_\_\_  
John N. Moscato  
Attorney  
Environmental Enforcement  
Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945N  
Denver, CO 80202

Date: 7.17.97

 Acting  
Max H. Dodson  
Assistant Regional Administrator  
For Ecosystems Protection and Remediation,  
Region VIII, U.S. Environmental Protection  
Agency 999 18th Street, Suite 500  
Denver, Colorado 80202

Date:

4/7/97

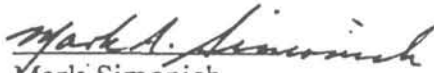


D. Henry Elsen, Attorney  
Legal Enforcement Program  
U.S. Environmental  
Protection Agency  
Region VIII, Montana Office  
301 S. Park  
Helena, Montana 59626


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oaas, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.

FOR THE STATE OF MONTANA

Date: 4/8/97

  
Mark Simonich  
Director  
Department of Environmental  
Quality  
P.O. Box 200901  
Helena, Montana 59620-0901

Date: 4-1-97

  
William B. Kirley  
Legal Counsel  
Environmental Remediation  
Division  
Montana Department of  
Environmental Quality  
P.O. Box 200901  
Helena, Montana 59620-0901



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oaas, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.

FOR SETTLING DEFENDANTS

Date: 2-27-97

Torger L. Oaas  
Torger L. Oaas  
202 West Greenwood Avenue  
Butte, Montana 59701

Date: 2-27-97

Martha Oaas  
Martha Oaas  
202 West Greenwood Avenue  
Butte, Montana 59701

Agent Authorized to Accept Service on Behalf of Above Signed Parties:

Date: 2-27-97

Torger S. Oaas  
Torger S. Oaas, Esq.  
618 W. Main Street  
Suite 201  
Lewiston, Montana 59457

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oaas, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.

FOR ROY F. WESTON, INC.

Date:

3/7/97

By:



Donald B. Bauer

Vice President & Assistant General Counsel

Agent Authorized to Accept Service on Behalf of Above-signed Party:

CSC United States Corporation Company  
26 West Sixth Avenue  
Helena, MT 59601

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oaas, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.

FOR RIEDEL ENVIRONMENTAL SERVICES,  
INC.

Date:

*March 7, 1997*

By:



W.D. Nelson  
Executive Vice President  
Riedel Environmental Services,  
Inc.  
12750 Merit Drive  
Suite 1166  
Dallas, Texas 75251

Agent Authorized to Accept Service on Behalf of Above-signed Party: